



Report to Council

Department: Office of the CAO
Division: Legal and Legislative Services
Date: May 16, 2022
Prepared by: Robert W. Auger, Town Solicitor, Legal and Legislative Services/Clerk
Report Number: Legal & Legislative Services 2022-21
Subject: Restricted Acts (Lame Duck) Delegation of Authority Provisions
Number of Pages: 4

Recommendation(s)

That Legal & Legislative Services 2022-21 entitled Restricted Acts (Lame Duck) Delegation of Authority Provisions prepared by Robert W Auger, Town Solicitor/Clerk dated May 16, 2022 be received, and

That By-Law 2157 being a by-law to Temporarily delegate certain authorities during a "Lame Duck" Council Period be read a first, a second and be provisionally adopted on May 16, 2022.

Purpose

The purpose of this report is to provide Council with information regarding the restricted acts provisions contained in the Municipal Act, 2001 and a proposed by-law to temporarily provide the Corporation of the Town of Essex with the ability to conduct certain business in the event of the Council being restricted in authority pursuant to these provisions.

Background and Discussion

Section 275 of the Municipal Act, 2001 prohibits Municipal Councils from undertaking certain acts after Nomination Day in a municipal election (August 19, 2022) for the 2022 municipal election) and prior to a new Council taking office under specific conditions.

The legislative restriction is referred to as “Restricted Acts” or more commonly referred to as the “lame duck” provision.

A Municipal Council can find themselves in a “Lame Duck” situation during one or both of the following time periods:

- The period from Nomination Day (August 19, 2022) to Voting Day (October 24, 2022); and
- The period from Voting Day to the end of the Term (November 15, 2022).

If, from Nomination Day to Voting Day and from Voting Day to the end of the Term it can be determined with certainty, that the new Council will include less than three-quarters of the outgoing Council Members (i.e. less than 6 members), then “lame duck” status applies and Council is restricted from taking certain actions until the new term of Council begins on November 15, 2022.

If the Restricted Acts provision is engaged, this Council would be subject to certain restrictions, including:

- a) The appointment or removal from office of any officer of the municipality;
- b) The hiring or dismissal of any employee of the municipality;
- c) The disposition of any real or personal property of the municipality which has a value exceeding \$50,000 at the time of disposal; and
- d) Making any expenditure or incurring any other liability which exceeds \$50,000.

Clauses c) and d) above do not apply if the exceeding disposition or liability was included in the most recent budget adopted by Council prior to Nomination Day.

Section 275(6) further provides that even if the Restricted Acts section is engaged, it does not affect any delegation of authority which has been properly granted prior to Nomination Day. Council's existing delegations under the Delegation of Authority By-Law and the Procurement and Disposal of Goods and Services by-law are not impacted by the aforementioned restrictions.

The proposed Restricted Acts Delegation of Authority By-law (Hereinafter "Restricted Acts By-law") seeks to safeguard against the potential gaps by temporarily delegating additional authority beyond that already delegated by Council and would **come into affect only if the Restricted Acts section should apply to this Council**. The temporary by-law provides for a sunset provision, rendering the by-law null and void upon the commencement of the inaugural meeting of the new Council, scheduled for December 6, 2022. Further, the CAO would be required to report to Council in the first quarter of 2023 regarding any exercise of this delegated authority during the applicable period.

Financial Impact

If the Restricted Acts By-Law is in effect, and the delegated authority is required to be used during the limited time period of applicability, there is the delegated authority for example for a tendered project to be approved outside the current approved budgets for amounts exceeding \$50,000, but not greater than \$150,000.

Additionally, if the delegated authority is used to terminate either an employee or an officer of the municipality, without cause, an unbudgeted expense would incur.

Finally, the delegated authority may result in the sale of real or personal property which has a value exceeding \$50,000 at the time of disposal.

Consultations

Doug Sweet, Chief Administrative Officer

Kate Giurissevich, Director, Corporate Services/Treasurer

Shelley Brown, Deputy Clerk

Link to Strategic Priorities

- Manage, invest and plan for sustainable municipal infrastructure which meets current and future needs of the municipality and its citizens.
- Create a safe, friendly and inclusive community which encourages healthy, active living for people of all ages and abilities.
- Provide a fiscal stewardship and value for tax dollars to ensure long-term financial health to the municipality.
- Manage responsible and viable growth while preserving and enhancing the unique rural and small town character of the community.
- Improve the experiences of individuals, as both citizens and customers, in their interactions with the Town of Essex.
- Improve the Town's capacity to meet the ongoing and future service needs of its citizens while ensuring the corporation is resilient in the face of unanticipated changes or disruptions.

Report Approval Details

Document Title:	Restricted Acts (Lame Duck) Delegation of Authority Provisions.docx
Attachments:	- By-Law No. 2157 - Temporarily Delegate Certain Authority to CAO and Director during Lame Duck Council Period.docx
Final Approval Date:	May 9, 2022

This report and all of its attachments were approved and signed as outlined below:

A handwritten signature in black ink, appearing to read "Doug Sweet". The signature is stylized with a large "D" and a long horizontal stroke extending to the right.

Doug Sweet, Chief Administrative Officer - May 9, 2022 - 2:54 PM